

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA,

v.

KIM DOTCOM, et al.,

Defendants.

)
)
) The Honorable Liam O’Grady
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)
)
) Criminal No. 1:12-CR-3
)
)

**MOTION OF QUINN EMANUEL URQUHART & SULLIVAN LLP
AND THE ROTHKEN LAW FIRM FOR LEAVE TO ENTER LIMITED
AND SPECIAL APPEARANCES ON BEHALF OF KIM DOTCOM AND
MEGAUPLOAD LIMITED TO FILE A FURTHER RESPONSE IN SUPPORT OF
THEIR LETTER TO THE COURT DATED DECEMBER 4, 2013**

Non-parties Quinn Emanuel Urquhart & Sullivan LLP and the Rothken Law Firm (“Movants”), on their own behalf, respectfully move this Court for leave to enter limited and special appearances on behalf of Defendants Kim Dotcom and Megaupload Limited (“Megaupload”) for the purpose of submitting a further response in support of their letter to the Court dated December 4, 2013 (Dkt. 186) and in opposition to the Government’s response thereto (Dkt. 187). A copy of the response that Movants propose to file and argue pursuant to their limited and special appearances is appended hereto for the benefit of the parties and the Court. In the event that the requested leave is granted, Movants respectfully request that the proposed response be accepted as filed *nunc pro tunc* as of this date.

The grounds for this Court to permit a limited appearance have already been briefed and need not be belabored. Indeed, this Court has already permitted Movants to appear on a limited basis. *See* April 13 Hrg. Tr. (Dkt. 84) at 27:21-23 (“THE COURT: I am going to allow you to appear limited, for purposes of this hearing today on a limited basis. I won’t hold you in the case

after today.”). For present purposes, Movants simply incorporate by reference their prior briefing on this point, *see* Memo. in Support of Mot. for Leave to Enter Limited Appearance (Dkt. 60); Rebuttal Memo. in Support of Mot. for Leave to Enter Limited Appearance (Dkt. 79); Mot. for Leave to Enter Limited and Special Appearances (Dkt. 96), focusing herein only on considerations that specially support grant of the requested leave at this time.

The undersigned counsel recently learned that, on November 22, 2013, this Court issued a sealed *ex parte* order (“Order”) that potentially prejudices Defendants’ rights. Defendants strongly object to the *ex parte* nature of the Government’s submission to this Court because, as detailed in their December 4 letter, the *ex parte* submission is contrary to law, stands a significant chance of infecting the jury pool through the publication of a one-sided, cherry-picked account of the evidence in this case, and is part of a larger pattern of Government conduct calculated to strong-arm Defendants into surrendering their due process and other constitutional rights.

The Government’s December 6, 2013 responsive submission merits further response from Defendants because it misleadingly suggests that Movants acted improperly by submitting a public filing that openly discussed the existence of the *ex parte* order, when it was the Government itself that made the Order public in New Zealand. It further merits response because it criticizes Defendants’ efforts to preserve their constitutional rights as being somehow improper. Finally, the Government’s ostensible justification for its use of an *ex parte* proceeding merits response because it invokes law that does not support the Government’s position.

Movants therefore respectfully request that the Court grant the undersigned counsel leave to enter a limited and special appearance on behalf of Defendants Kim Dotcom and Megaupload in order to offer further argument in support of the relief requested in their December 4, 2013

letter, in which they ask the Court to: (1) withdraw its November 22 order; (2) grant Defendants immediate access to the Government's submissions; and (3) provide Defendants a fair opportunity to oppose the Government's request, as due process requires. Movants further request that the Court permit them to enter a limited and special appearance both to seek the relief identified in their December 4 letter and to oppose the Government's response filed on December 6, 2013.

* * *

For the foregoing reasons, Movants respectfully request that the Court grant the undersigned leave to appear on a limited and special basis. A proposed order is attached.

Respectfully submitted,

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Counsel for Defendant Megaupload Limited

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2013, the foregoing MOTION OF QUINN EMANUEL URQUHART & SULLIVAN LLP AND THE ROTHKEN LAW FIRM FOR LEAVE TO ENTER LIMITED AND SPECIAL APPEARANCES ON BEHALF OF KIM DOTCOM AND MEGAUPLOAD LIMITED TO FILE A FURTHER RESPONSE IN SUPPORT OF THEIR LETTER TO THE COURT DATED DECEMBER 4, 2013 was filed and served electronically by the Court's CM/ECF system upon all registered users.

/s/ Heather H. Martin

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Alexandria Division

UNITED STATES OF AMERICA,)	
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v.)	The Honorable Liam O’Grady
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KIM DOTCOM, et al.,)	
)	Criminal No. 1:12-CR-3
Defendants.)	

[PROPOSED] ORDER

UPON CONSIDERATION of the motion filed by non-parties Quinn Emanuel Urquhart & Sullivan LLP and the Rothken Law Firm and for the reasons stated in support thereof, it is hereby:

ORDERED that attorneys from Quinn Emanuel Urquhart & Sullivan LLP and the Rothken Law Firm are granted leave to enter limited and special appearances on behalf of Defendants Megaupload Limited and Kim Dotcom for the purposes of filing a further response in support of their letter to the Court dated December 4, 2013, which opposes the Government’s use of certain *ex parte* processes.

It is further ORDERED that Defendants Megaupload Limited and Kim Dotcom will not be deemed to have waived any of their jurisdictional objections by virtue of the filing or arguing of their December 4, 2013 letter or further response in support thereof.

It is further ORDERED that the Further Response that the above-referenced counsel have proposed for filing pursuant to their limited and special appearances shall be deemed to have been properly filed *nunc pro tunc* on December 10, 2013.

It is further ORDERED that, after the Court's resolution of the aforementioned or any related filings, counsel entering limited and special appearances pursuant to this Order may at their option withdraw their appearances without seeking further approval from this Court.

Dated: December __, 2013

Judge Liam O'Grady
United States District Judge